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5 min

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Test No. /Name TEST TC303 Date 10/07/23

(For filling by Examiners only)

S.No.	Max. mark	Max. Obtained	S.No.	Max. mark	Max. Obtained
1.	10		11.	15	
2.	10		12.	15	
3.	10		13.	15	
4.	10		14.	15	
5.	10		15.	15	
6.	10		16.	15	
7.	10		17.	15	
8.	10		18.	15	
9.	10		19.	15	
10.	10		20.	15	

Total Marks Obtained:

Mentor's Comments:

- Note:
1. This booklet is to be used for attempting assessment tests and revision tests only.
 2. This page needs to be attached as first page of every uploaded test.

Q1. IX schedule once a vessel for reforms was transformed into a constitutional dustbins of limitless proportions. What was the significance of IR Coelho judgement wrt IX schedule of Constitution? (10M)

IX schedule of constitution was introduced by first constitutional amendment Act, 1951 to bring about land reforms in a newly independent and resource-deficient nation. Yet, it became a tool for protection from judicial review and over 200 legislations became part of it in 75 years.

SIGNIFICANCE OF IR COELHO CASE :-

- 1) In this case, an act under TN was placed under IX schedule under pretense of land reforms, immune from judicial review.
- 2) However, SC stated that IX schedule doesn't provide a license to undo constitutional protection.
- 3) If the act violates art 14, 19, 21, the act could be struck down, despite IX schedule.

4) Formulated essence of rights test -

It doesn't matter which part of consti is ~~violated~~ ^{amended}, the effect on 'rights' is what that matters.

5) Protects individuals from executive overreach
- can't breach Basic structure of the Constitution.

6) Subjected all laws to basic structure after 24th April, 1973 (Date of K Bharti case)

7) Established supremacy of constitution

8) Relooked previous cases like Waman Rao and inspired further cases to prevent ~~for~~ misuse of power by executive

9) Protects fundamental rights and balance them against development goals.

Therefore, KR Lakshmi case was a mile stone in jurisprudence of IX schedule and protects from excess done by legislature & executive.

Q2. Examine the importance of establishing a National Tribunals Commission in systematically reforming tribunal system in India. (10M)

Tribunalization in India began with the 42nd CAA, 1976 when Art 323 A (for administrative tribunal) and Art 323 B (for others) were established. Yet over years, tribunals have become object of criticism because of functioning ineffectively.

IMPORTANCE OF NATIONAL TRIBUNALS

COMMISSION :-

1) Achieve expertise :- Diff expert led tribunal without overlapping functions can be created for different subject matters.

2) Efficiency :- NTC would determine broad timeline, rules of procedure and evidence for efficient functioning.

3) Reduce executive influence in judiciary

L Chandra Kumar case first suggested

NTC because they wanted to have an appointment system free from

executive interference. This will ensure independence of judiciary.

4) Corporate structure - A Board, secretariat and CEO at NTC will definitely reform its bureaucratic style of working.

5) Will help fill judicial vacancy - Presently tribunals like NCLT face heavy vacancy which delay important commercial matters. NTC can regulate this.

6) Periodic assessment of work done by tribunals and goal based system.

7) Effective functioning will

reduce appeals from tribunals

reduce case load of judiciary

8) Increase in diversity and transparency in appointment.

Therefore, NTC if implemented properly, can bring much needed reforms and avoid problem of tribunalization of justice as pointed by SC.

Q3. The governor's office is neither decorative, nor inconsequential, assumes a constitutional role of profound essence. To what extent governor actively contribute to the governance of a state & reinforce principles of federalism? (10M).

The office of governor (Art 161) has been deemed as an important office which plays dual role of being linchpin between centre and state and also being the neutral head of state.

CONTRIBUTION IN GOVERNANCE

1) Executive Head

- i) all decisions taken in his name
- ii) makes rules for transactions in House

2) Legislative role

- i) gives final assent to Bill
- ii) summons & prorogues house

3) Ordinance making power in case of urgent situations (Art 213)

4) calls the members of opposition party to form govt when present govt less majority → eg: Karnataka.

- 5) Judicial powers - appoints judges and members of subordinate judiciary.
- Can also grant commutation, respite, reprieve, from death sentence.

REINFORCE FEDERALISM

- 1) Reserve any Bill for President assent (Art. 200) which seems to contravene Constitution
- 2) Acts as a linchpin - communicates concerns of states to centre.
- 3) Checks on autocratic tendencies of states :-
 - i) opposes Bills : ex: NEET Bill, TN
 - ii) suggests President rule in state of Maharashtra.

Yet, the office of governor seems under scrutiny for acting more as an AGENT of centre. In line with Punchhi, Sarkaria Commission reports, the office of governor should become independent, secure and accountable.

Q4. Instances of President's delay in commuting death sentence have come under public debate as a denial of justice. Should there be a time specified for President to accept/reject such petitions? Analyse (10m)

'Justice Delayed is justice Denied' is a famous quote which captures the problem with mercy petitions where convicts sit in prisons with uncertainty of their fate for years.

TIME SPECIFIED FOR ACCEPTING /

REJECTING PETITIONS :-

- 1) Reduce uncertainty for victim and his family members - close to some 2 thousand people sitting on death row [only 4 convicted/hanged while 2800 sentenced to death from 1990-2000]
- 2) Upholds human rights of victim
- 3) In consistence of UDHR, ICCPR
- 4) Will also inspire judiciary to increase the speed of ~~the~~ disposal of case
- 5) To be complemented with some

tax management system which helps organize filing and reduce uncertainty and over filing.

6) no dismissal merely on procedural lacuna → should be given time bound opportunity to rectify errors.

Judicial
delay still

↑ not curbed

problems of
inconsistent
evidence and documents

POTENTIAL ISSUES

→ multiple filings
of same petitions.

↓
Political
angle
which prevents
correct
evaluation
by court

↓
Public pressure
in high profile
cases may lead to
hurried injustice

In Shatrughan Chauhan vs UOI (2014)

SC stated that delay in accepting/ considering mercy petition is a ground for condonation of death sentence. It is important from human rights perspective to ~~del~~ fasten the process as far as possible.

05. How has judicial activism in India contributed to protection and advancement of Human rights? Discuss with reference to significant cases. [10M]

Judicial activism refers to responsibility undertaken by judiciary to fill in the gaps left by legislature and executive to resolve the problems of underprivileged masses.

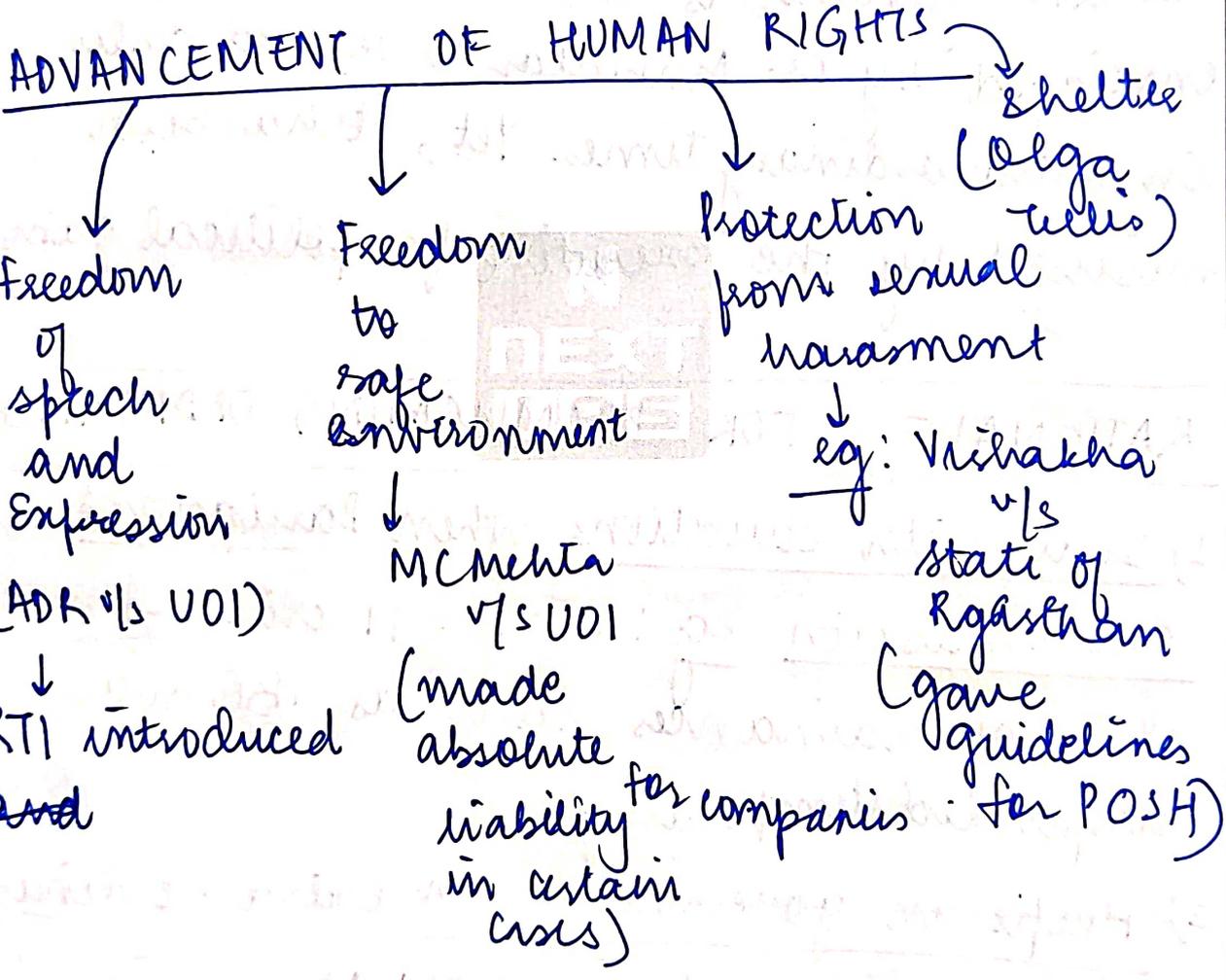
ROLE IN PROTECTION OF HUMAN RIGHTS

1) Evolution of Basic structure

i) starting from Shankari Prasad to Keshavananda Bharati case (1973), judiciary innovated this doctrine to preserve living spirit of constitution and made an evolving list of inviolable principles.

ii) In Minerva Mills case (1980), the judiciary stated that balance between fundamental rights and DPSP is a part of Basic structure and no one can be given predominance.

- 1) Protection from authoritarianism
- i) In Indira Gandhi v/s Raj Narain - court stated that elections are part of BS and can't be undermined.
 - ii) SR Bommai Case - Separation of powers, rule of law - part of Basic structure.



Thus, SC ~~was~~ and various HC's have used their powers to save the rights of individuals and provide them with dignity.

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Q6. Resorting to ordinance has always raised concerns about violation of spirit of separation of power. While noting the rationale justifying power to promulgate, analyze whether decision of SC on the issue has further facilitated resorting to this power. Should the power to promulgate ordinances be repealed? (5M)

Ordinance making power (Art 123- President & Art 213- governor) is an extraordinary power envisaged by Dr. Ambedkar to be used only in extra-ordinary times. Yet, it has been misused by the executive for political gains.

RATIONALE FOR PROMULGATING ORDINANCE

- 1) Deal with situations when Parliament not in session eg: COVID-19 crisis → slew of ordinances such as IBC was suspended temporarily.
- 2) Helps in governance in extra-ordinary times: eg: Launch of PM Atmanirbhar Scheme to provide food grains in COVID-19 crisis.
- 3) Ensures that there is no break in legislative policy making.

4) Doesn't replace Parliament :-

- i) not a parallel power
 - ii) subject to same limitations
 - iii) has to be presented before parliament within 6 months of each house reconvening.
- ∴ ~~executive~~ can exercise adequate control legislature over executive.

SC Decisions on issue :-

1) Krishna Kumar v/s State of Bihar (2017) - ~~256~~

Ordinances in Bihar were promulgated without presenting to state legislature.

Court stated - promulgation without presenting to Parliament / state legislature is a constitutional fraud.

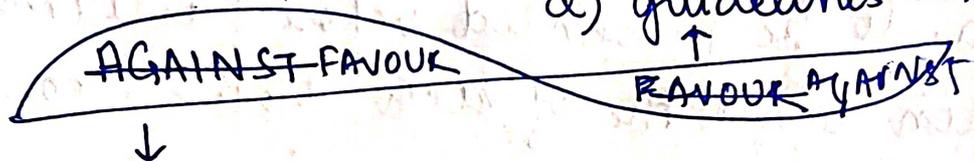
2) SR Bommai v/s UOI - action by President without relevant material is in bad faith.

3) RC Cooper (1970) - President satisfaction can be challenged.

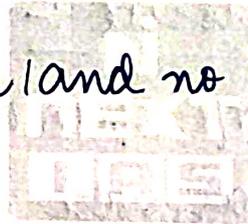
Therefore, supreme court has tried to curb the misuse of this power.

SHOULD THE POWER BE REPEALED?

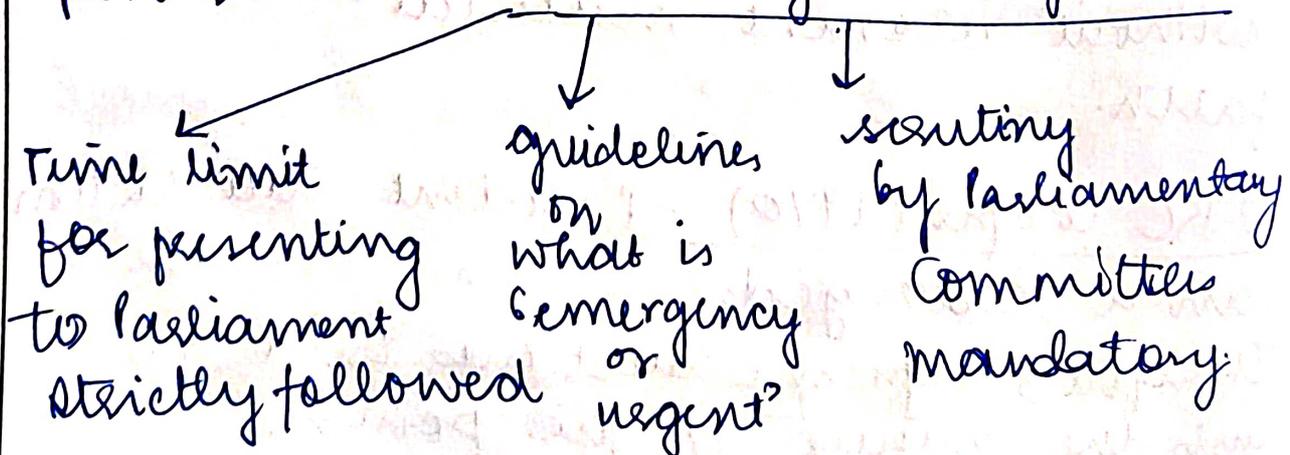
- a) Helps meet contingencies
- b) Keeps democracy in function
- c) sufficient checks & balance be put
- d) guidelines can be issued



- a) against separation of power
- b) rampant misuse
- c) important bills passed eg: Repeal of Art 370 through this
- d) Re-promulgation and no Parliamentary discussion.



Even though, there have been sufficient cases of misuse, the power of ordinance is crucial to deal with genuine situations of emergency. Instead of repealing, the power can be managed & regulated



Q7. Constitution envisages an independent judiciary, not an insulated judiciary. In light of this discuss issues related to appointment of judges in higher judiciary and suggest alternatives to current system. [15M]

Judiciary has been envisaged as the third pillar of governance which plays a crucial role in providing check and balance over other two organs. However, it is itself come under scrutiny due to opacity and non-accountability in its procedures.

ISSUES RELATED TO APPOINTMENT OF JUDGES

1) Appointment by President

Art 124 and 212 of Indian constitution empowers President to appoint judges of SC and HC. However, he has to 'consult' CJI ~~and~~ before appointment

2) 'Consultation' - meaning expanded

The meaning of consultation has been invariably expanded in III Judges case by SC → consultation means concurrence

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with chief justice and 4 other senior most judges of the Supreme Court. The President is bound to follow their advice.

(3) NTAC struck down :- NTAC introduced by 99th CAA, 2014 was sought to bring an executive check over judiciary but in 4th judge case (SCAORA v/s UOI) → held that NTAC is unconstitutional (Executive cannot be given equal say/more say in judicial appointment)

(4) Problems with collegium :-

- (i) opacity - no minutes of meeting shared
- (ii) Lack of representation - Hardly 11 women judges part of SC till date, no representation in collegium ∴ perpetuates judiciary as old boys club
- (iii) Prevalance of nepotism.
- (iv) Delay in decision making leading to vacancy (close to 20% in higher courts)

Alternatives to present system :-

1) NTAC revived - By rectifying errors

in selection committee, making judicial say stronger and guaranteeing its independence. NJAC should be revived.

2) Remove opacity and include transparency in decisions of meeting.

3) An independent selection committee can be formed on lines of UK, south Africa model. [members from govt, opposition

and judiciary]
4) Greater representation to women, other marginalized sections to become part of selection panels.

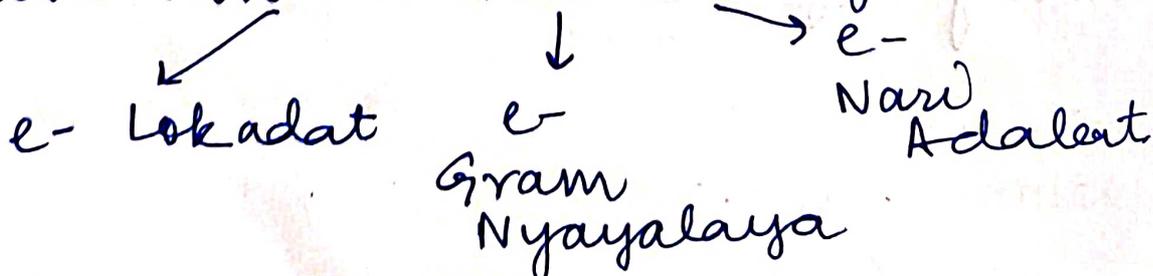
Therefore, in a democratic political economy it is crucial that tyranny of unelected be curbed. While independence of judiciary is crucial, effective check and balance are necessary to insure proper working - Justice Chelameshwar.

Q8. Examine, advantages and challenges associated with ODR mechanisms in dispute resolution (15M)

Online Dispute Resolution is an innovative tool to resolve disputes using an intersection of ADR and technology. The technology became more prevalent during COVID-19 pandemic when it helped overcome the problem of physical barriers.

ADVANTAGES

- 1) Quick Resolution of disputes - rather than conventional methods which takes years.
- 2) Procedural flexibility - parties can decide eg: S. 21 of Arbitration & Conciliation Act.
- 3) Facilitates cross-border transactions with ease - Parties don't need to meet personally
- 4) Helps overcome judicial pendency - Close to 4.7 crore cases pending in subordinate courts can be resolved through



5) Retains long term relationship ~~bet~~ between parties

6) Accessibility of infrastructure :-

↳ Ministry of Consumer Affairs - Online Dispute Resolution Forum

↳ OCMC, NLSIU, Bengaluru etc.

↳ ADR by arbitral institutions such as MCA, India Center of Arbitration etc.

7) Newer technology like block chain (for contracts), video conferencing (for meetings) can be harnessed.

CHALLENGES ASSOCIATED

1) Accessibility - Close to $\frac{1}{3}$ rd women only use internet, moreover 61% urban & only 30% rural population have proper internet access [India Internet Report, 2019]

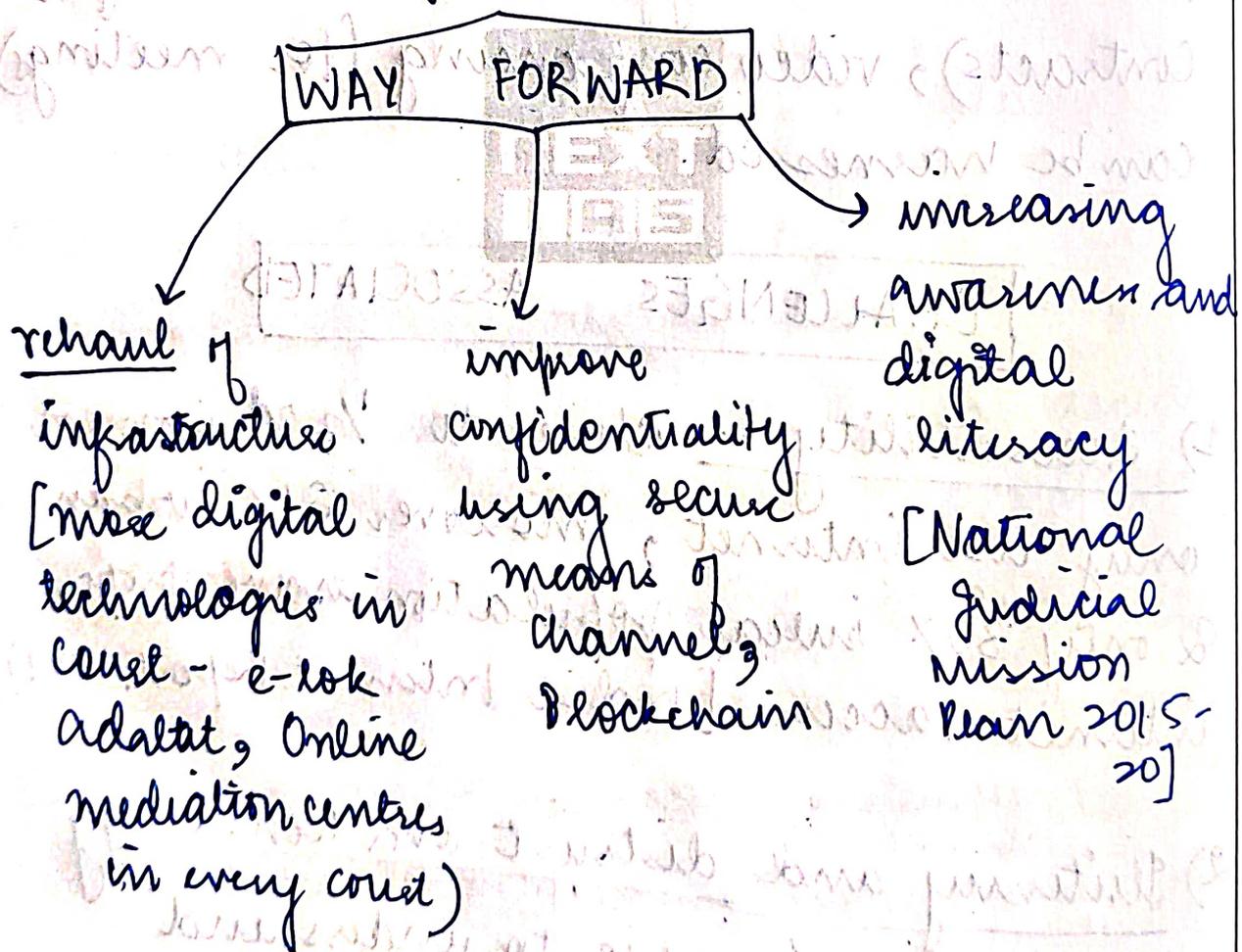
2) Illiteracy and distrust over technology

↳ People aren't able to understand complex processes

↳ Even lawyers aren't equipped to handle emerging concerns.

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- 3) Confidentiality - In times of data breach becoming regular (Eg: COWIN leak), it becomes a problem to share data online.
- 4) Lack of adequate infrastructure at grassroots & frequent internet shutdowns.
- 5) Appeals - Losing parties in most cases approach court - affecting the desirability and increasing time & costs.



Therefore, only if positive measures are taken in this direction, can ODR reach its full potential.

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Q9. Judicial legislation is antithetical to doctrine of separation of powers as envisaged in Indian Consti. In this context justify the filing of large no. of PIL praying for issuing guidelines to executive authority. (15M)

Public interest litigation is an opportunity to right spirited citizen to approach the court, bypassing procedural norms, in issues of welfare of society at large.

JUSTIFICATION FOR FILING LARGE NO. OF PIL :-

1) Procedure :-

- i) Relaxed as even a letter can treated as PIL [Sheela Barse vs 40 Maharashtra]
- ii) no strict procedure w/ CrPC or evidence
- iii) Locus standi norms are relaxed to enable large no. of people to approach court [SP Gupta vs UOI (1993)]

2) Rights violation :-

- i) judiciary has the power to deal with executive overreach.

- ii) can initiate enquiry ~~can~~ against corrupt officials and give them directions. [MC Mehta v/s UOI]
- iii) People who can't file their cases themselves on account of inability - economic, social also get represented. [Hussainara Khatoon v/s UOI]
- 3) Policy gaps filled
- i) Allows court to make positive laws where ~~for~~ legislature failed [eg. ~~state of~~ Vishakha v/s state of Rajasthan - issued guidelines for sexual harassment at work place]
- ii) Favoured a strong environmental rights litigation regime. eg: issued ban on crackers, ban on sale of polluting vehicles.

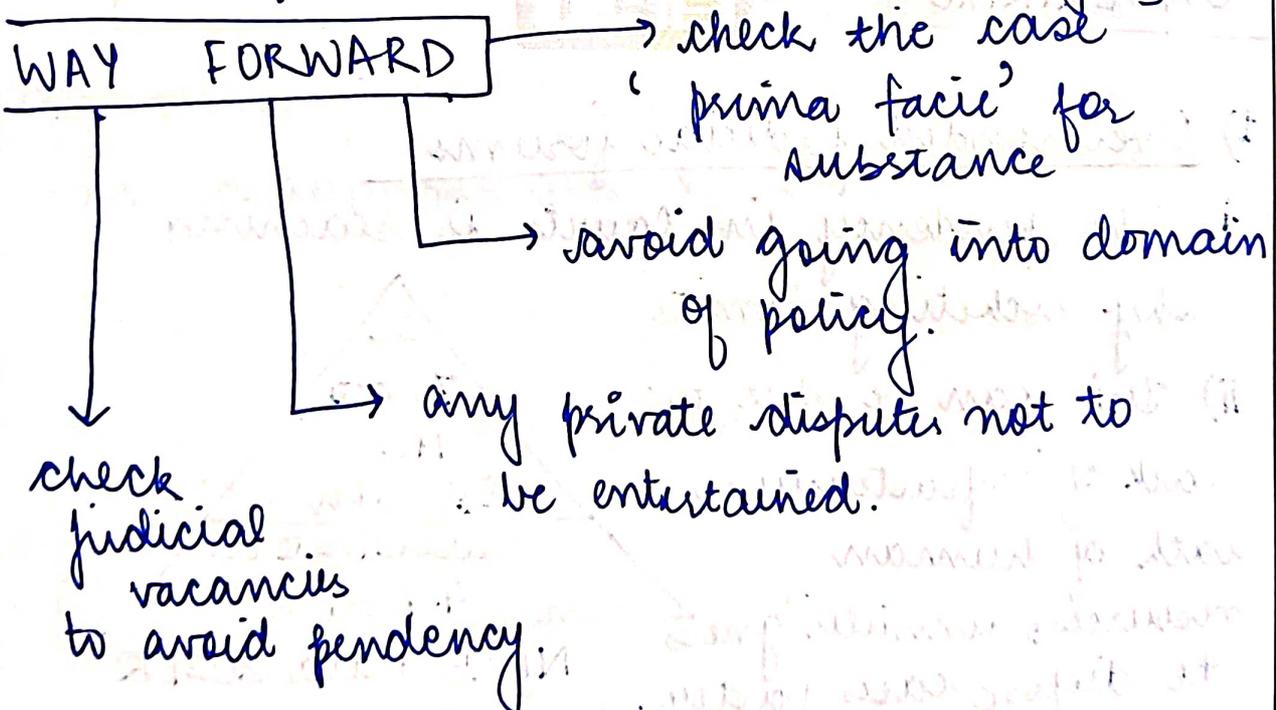
However, this power has often come into scrutiny because of misuse :-

- 1) Private Interest Litigation → People often approach court to resolve their private disputes.

2) Forum for publicity - a lot of baseless cases are filed just to get publicity eg - Rajeev Suri vs DDA - PIL against Central Vista.

3) Judicial overreach - gave overbroad directions to executive eg: Banning sale of alcohol in 500 m from highway.

4) Replaces legislative policy making - eg: Vishakha, ADR vs UOI - disclosure of election details of candidate.



PIL, as a tool has the potential to liberate masses from fear and destitute. However, it should be used judiciously.

Q10. The huge number of undertrial languished in prisons reflect Equality before law doesn't always signify equal access to law. In this context, discuss reasons for growing no. of undertrial in Indian prisons and also suggest corrective measures [15M]

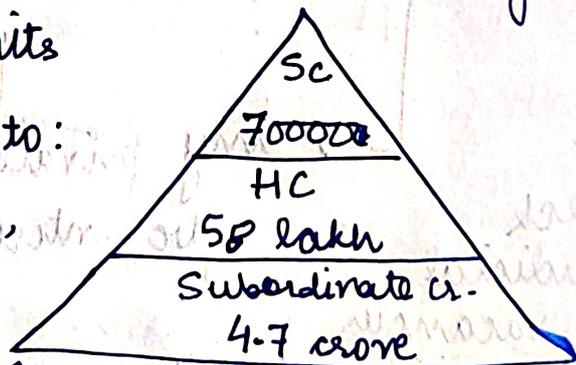
According to latest NCRB data released in 2021, close to 76% inmates in prisons are awaiting trial. This indicates a very poor state of affairs of adjudication and rights litigation in India.

REASONS FOR GROWING NUMBER OF UNDERTRIAL :-

1) Overcrowded judicial forums

i) The pendency in courts is reaching sky-rocketing limits

ii) This can be due to:
lack of infrastructure,
lack of human resources, unwillingness to dispose cases faster.



NCRB Data 2021 &
India Justice Report 2022

2) Lack of adequate no. of judges -

As per LCI, total no. of required judges → 50 per million. but no. of

available judges is only 21 per million.

3) Unequal access to various communities

(i) As per NCRB data, of the 76% industrial prisoners, 67% belong to marginalized groups (SC, ST, OBC)

(ii) Often, they don't have amount to furnish bail bond.

(iii) Lack of legal aid as number of pro-bono litigators are very few and govt. doesn't provide proper counsels.

4) Political disputes - People in power often

get others arrested in malicious charges leading to increase in numbers.

5) Lack of judicial propriety

i) no time limit for case dismissal / giving decision

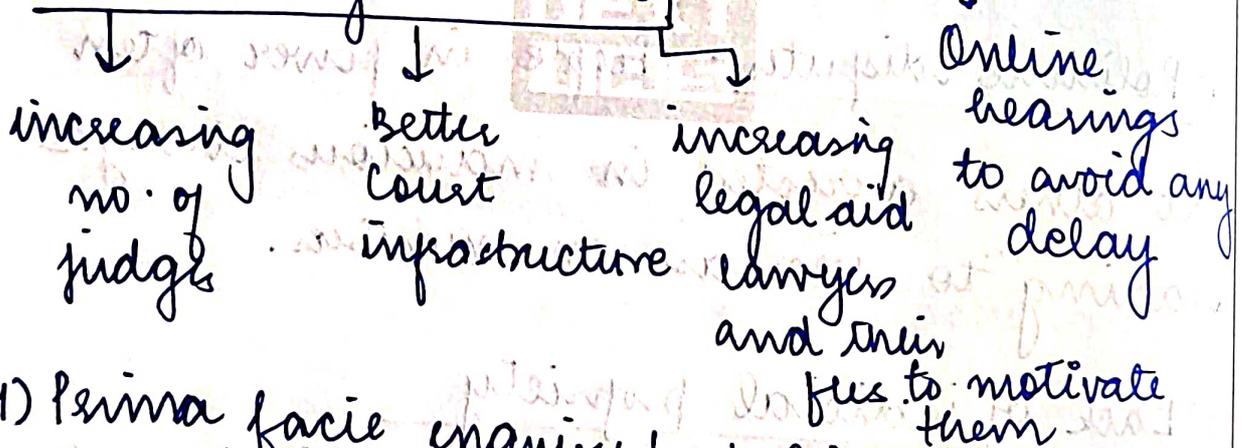
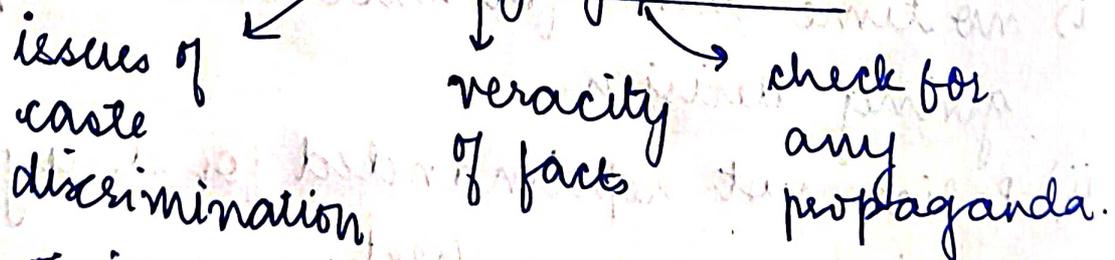
ii) Police not reprimanded for delay in filing charge sheet.

iii) slow functioning of fast track courts.

iv) states like UP take 11 years for a case to be dismissed.

Corrective measures:

- 1) Bail as rule, jail exception → SC in no. of cases stated that bail should not be denied in bailable offences and in non-bailable cases where accused is willing to furnish bond conditions.
- 2) Arrest :- (Armesh Kumar case 2014)
→ SC gave guidelines for arrest only if certain conditions met, should police arrest.

3) Increasing resources4) Prima facie enquiry by police5) Anticipatory bail be given when feasible

Therefore, to curb menace of undertrial prisoners, both state and judiciary would need to work together effectively.